IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.9989 OF 2004

The Principal, College of
Agriculturist, Shivajinagar. ...Petitioner.

Vs.

Smt.Tarabai Pandurang Vitekar. ...Respondents.

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Mr.Smt.Neeta Karnik for the Petitioner.

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CORAM : DR.D.Y.CHANDRACHUD, J.

April 13, 2005.

P.C. :

The Controlling Authority as well as the Appellate Authority under the Payment of Gratuity Act, 1972, have both come to the conclusion that the Respondent was entitled to the benefit of gratuity under the Act. The Respondent worked as a labourer in the Agricultural College conducted by the Petitioner from 1st June 1972 to 17th July 1995 and upon the conferment of permanency on 18th July 1995 until she retired on attaining the age of

superannuation on 31st June 2002. The authorities below have relied upon a judgment of a Single Judge of this Court in **Head Mistress (Mrs.P.D'Souza) Fatimadevi English High School vs. Nymphia Pereira**, 2002 III CLR 561, in which it is held that in view of the notification issued by the Central Government on 3rd April 1997, the Payment of Gratuity Act, 1972 would stand attracted in the case of teachers. The judgment of the Learned Single Judge can no longer be said to hold the field in view of the decision of the Supreme Court in **Ahmedabad Pvt. Primary Teachers' Association vs. Administrative Officer**, (2004) 1 SCC 755 where the Supreme Court held that a teacher is not an employee under Section 2(e) of the Payment of Gratuity Act, 1972.

The Respondent, however, was not a member of the teaching staff. The Supreme Court in the course of its judgment adverted to the notification dated 3rd April 1997 issued by the Central Government under Section 1(3)(c) of the Payment of Gratuity Act, 1972 by which educational institutions in which ten or more persons are employed or were employed on any day of the preceding twelve months have been notified as a class of establishments to which the Act would

apply with effect from the date of the publication of the notification. In paragraph 20 of the judgment, the Supreme Court observed that on behalf of the Municipal Corporation, which was the Respondent before the Court, it was contended that the only beneficial effect of the notification is that such non-teaching staff of educational institutions as answers the description of any of the employments contained in Section 2(e) would be covered by the provisions of the Payment of Gratuity Act, 1972. In that view of the matter the order of the Appellate Authority under the Payment of Gratuity Act, 1972 does not call for any interference. It has been stated on behalf of the Petitioner that gratuity has been paid to the Respondent under the provisions of the Maharashtra Civil Services Rules. In the event that this is found correct upon verification, the Respondent would be liable to pay the difference between what has been paid and the amount found to be due and payable. There is no merit in the Petition which is accordingly rejected.

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